DOCUMENT RESUME

ED 301 405 SE 050 092

TITLE	100 Commonly Asked Questions about the New AHERA Asbestos-in-Schools Rule.
INSTITUTION	Environmental Protection Agency, Washington, D.C. Office of Toxic Substances.
PUB DATE	May 88
NOTE	65p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
PUb TYPE	Reports - Descriptive (141)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Asbestos; College Science; *Design Requirements; Elementary School Science; *Elementary Secondary Education; Environment; *Federal Regulation; *Hazardous Materials; Higher Education; *Occupational Safety and Health; Physical Health; Public Agencies; Science Education; Science Instruction; Secondary School Science
IDENTIFIERS	*Asbestos Hazard Emergency Response Act 1986; Environmental Protection Agency

ABSTRACT

This is a collection of commonly asked questions about the new Asbestos-Containing Material in Schools rule announced by the United States Environmental Protection Agency (EPA) in October 1987, under the Asbestos Hazard Emergency Response Act (AHERA) of 1986. It is offered as a guide to help school officials, training providers, and accredited persons better understand the new AHERA regulations. Many questions are answered directly and completely. Other questions are answered in general terms as the EPA's stance may change depending upon particular circumstances for individual schools. (ML)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED301405

SE

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

100 COMMONLY ASKED QUESTIONS

ABOUT THE

NEW AHERA ASBESTOS-IN-SCHOOLS RULE

Introduction

This is a collection of questions commonly asked about the new Asbestos-Containing Materials in Schools rule, promulgated by the U.S. Environmental Protection Agency in October 1987 under the Asbestos Hazard Emergency Response Act (AHERA) of 1986.

Many questions are answered directly and completely, as they are clearly addressed by provisions of the rule. Other questions, however, must be answered more generally, for the Agency's response to the question may change depending upon the specific circumstances in a particular school. Schools, of course, may also be subject to State or local asbestos management and abatement requirements, not reflected in this document.

This "100 Commonly Asked Questions" document is offered as a guide to help school officials, training providers and accredited persons better understand the new AHERA schools rule. If you have further questions, please contact the EPA Regional Asbestos Coordinator who serves your area or call the EPA Toxics Hotline in Washington, D.C., at 202/554-1404.

Office of Toxic Substances
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency
Washington, D.C. 20460

May 1988

SE 050 092

BEST COPY AVAILABLE

100 Commonly Asked Questions About the New AHERA Asbestos-in-Schools Rule

Table of Contents

		Page
I.	Effective Dates	1
II.	Buildings Covered by the Rule	6
III.	General LEA Responsibilities	12
IV.	Inspections, Reinspections, and Periodic Surveillance	16
V.	Exclusions	25
VI.	Response Actions	26
VII.	Operations and Maintenance (O&M)	29
VIII.	Custodial and Maintenance Worker Training	32
IX.	Management Plans	35
X.	Recordkeeping	42
XI.	Accreditation	43
XII.	TEM, PCM, Sampling and Analysis	50
XIII.	Warning Labels	56
XIV.	Transport and Disposal	58
XV.	State Waivers	59
XVI.	Miscellaneous	60

Acronyms Used in this Guide

ACBM	Asbestos-containing Building Materials
ACM	Asbestos-containing Materials
AHERA	Asbestos Hazard Emergency Response Act
LEA	Local Education Agency
NESHAP	National Emission Standards for Hazardous Air Pollutants
O&M	Operations and Maintenance
PCM	Phase Contrast Microscopy
TEM	Transmission Electron Microscopy

I. EFFECTIVE DATES

Questions 1 - 7 On what date does each of the following requirements become effective?

- the management plan
- specific O&M work practices
- O&M training
- periodic surveillance
- warning labels
- selection of an LEA's Designated Person
- management plan availability for public review

Answers:

- The Management Plan--The effective date of the management plan is the date on which the LEA begins to implement its plan. According to AHERA § 203(i), this can be no later than July 9, 1989.
- O&M Work Practices--After December 14, 1987, LEAs must abide by the operations and maintenance requirements in § 763.91, whenever any of these activities need to be performed.
- O&M Training--(i) The 14-hour training requirement (see section 763.92(a)(2)) is for specific members of the custodial and maintenance staff who conduct activities that may disturb ACBM. After December 14, 1987, only custodial and maintenance staff who have had the 14-hour training are permitted to conduct such activities.

(ii) The effective date for the 2-hour general awareness training is defined in the rule. Section 763.92 (a)(1) states that the LEA "... shall ensure, prior to the implementation of the operations and maintenance provisions of the management plan (emphasis added), that all members of its maintenance and custodial staff who may work in a building that contains ACBM receive awareness training of at least 2 hours." As outlined in the rule, therefore, all members of the custodial and maintenance staff must have awareness training on or before July 9, 1989.

- Periodic Surveillance--In § 763.92(b)(1), the rule states that "... at least once every 6 months after a management plan is in effect, each LEA shall conduct periodic surveillance...." in its buildings. Thus if a management plan was put into effect on July 9, 1989, for example, the LEA would have to conduct its first periodic surveillance by January 9, 1990.
- Warning Labels--Section 763.95(a) states that the LEA "... shall attach a warning label immediately adjacent to any friable and nonfriable ..." ACBM found in routine maintenance areas. As a result, if ACBM is

identified in routine maintenance areas, the material must be labeled as soon as possible thereafter. (For material identified under the 1982 rule, these materials should have been labeled as of December 14, 1987.) After the results of the inspections conducted pursuant to the 1987 schools rule are known, all ACBM identified in routine maintenance areas must be labeled.

- Selection of an LEA's Designated Person--Section 763.84 requires that LEAs designate a person to ensure that the actions of persons who conduct a variety of activities, including O&M, inspections and response actions, are carried out in accordance with the rule. As a result, LEAs must select a Designated Person as soon as possible to ensure these activities are done properly.
- Management Plan Availability for Public Review--Section 763.93(g)(1) states that "... upon submission of a management plan to the Governor for review, a local education agency shall keep a copy of the plan in its administrative office." This means that the LEA must have the plan available for public review (including parents and staff) in its administrative office on the day on which it is submitted. Each

individual school shall have a copy of the school's plan available on the same day.

Question 8: When must LEAs take certain response actions for areas of significantly damaged surfacing ACM and damaged or significantly damaged thermal system insulation ACM?

Answer: Several conditions listed in § 763.90 necessitate a quick response. For example, a room with significantly damaged friable surfacing ACM must be immediately isolated and access to it restricted, if these measures are needed to protect human health and the environment. In addition, damaged or significantly damaged thermal system insulation must be at least repaired and then maintained by the LEA in an intact state and undamaged condition. As a result, as soon as a management planner and LEA determine that these conditions exist, the LEA must initiate steps to take action. The LEA cannot wait until July 9, 1989 to address these hazards.

Question 9: The AHERA statute requires schools to begin implementing the management plan by July 9, 1989. Exactly what must be begun by this date?

Answer: July 9, 1989, is the latest date on which any LEA can begin to implement its management plan. The formal operations and maintenance plan designed for

a particular school (for example, a routine cleaning schedule for that school), and the response action schedule with completion dates, must be implemented no later than July 9, 1989. A schedule for an abatement project, for example, will become effective on July 9, 1989, even though the project is not scheduled until later. In addition, the July 9, 1989, date is the latest date on which schools can begin their periodic surveillance and reinspection intervals. In other words, periodic surveillance must be performed within 6 months of July 9 if a school begins to implement its management plan on this date.

II. BUILDINGS COVERED BY THE RULE

Question 10: A school district leases space from a nonschool group (corporation, YMCA, etc.). Who is responsible, the school district or the landlord, for complying with the AHERA rule?

Answer: The LEA is responsible for complying with the rule. There are several references to school buildings under the authority of an LEA in AHERA (see sections 203(b),(c),(d), (e),(f) and (i)). This phrase clearly covers buildings owned by the LEA. It also includes buildings leased by LEAs since LEAs control access to these buildings, how these buildings are used by occupants (e.g., classes in certain rooms, administrative offices in others), the furnishings within the buildings, and the scheduling of school-related activities. As a result, an LEA which leases a school building exercises authority with respect to the use of the building as a school. Section 763.85(a) of the rule states that leased school buildings are covered and that the LEA is responsible.

Question 11: If an LEA owns a building but does not currently use it as a school, must it be inspected by October 12, 1988? (For example, what if changes in school population have forced a school district to close a school and to rent the building out to a religious group for services?)

Answer: The LEA doesn't have to inspect such a building by October 12, 1988. However, § 763.85(a)(1) indicates that LEAs shall inspect each school building that they lease, own, or otherwise use. As a result, before an LEA decides to use a building already leased or owned as a school building, the LEA must first inspect the building.

In addition, § 763.93(a)(3) states, "If a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit a management plan for the school [to the State] prior to its use as a school."

Question 12: If an LEA obtains a building in April of 1990, for example, how soon must the LEA inspect it?

Answer: Section 763.85(a)(2) addresses this issue. "Any building leased or acquired on or after October 12, 1988, that is to be used as a school building, shall be inspected as described in (a)(3) and (4) of this section prior to its use as a school building."

Question 13: A school building burns down. An LEA wants to use a local community center for 6 months due to the emergency. Does this temporary school building have to be inspected?

Answer: Section 763.85(a)(2) states that, "In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within 30 days after commencement of such use."

Question 14: Will for profit schools be required to comply with the EPA rule?

Answer: No. Section 202(7) of AHERA specifically refers only to non-profit schools. As a result, schools operated on a for profit basis are not covered.

Question 15: Are State-run schools (e.g., prison schools, schools for the handicapped, etc.) covered by AHERA?

Answer: That usually depends on State law. AHERA section 202 states that "... the term 'school' means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)." The definition to which this refers states: "the term 'elementary school' means a day or residential school which provides elementary education, as determined under State law, and the term secondary school means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12..." (20 U.S.C.

2854) Thus, individual State law addresses whether a State-run school is covered as an elementary or secondary school.

Question 16: Several high school students take advanced placement classes with college freshmen at the State university. Does a classroom or building that these students frequent have to be inspected?

Answer: No. AHERA § 203 refers to school buildings under the authority of an LEA. These classrooms are not under an LEA's authority, and therefore are not covered.

Question 17: Each year the local high school has its annual play at a local community center. Rehearsals and the actual shows run for over 2 months. Is this building covered?

Answer: If the local community center is not under the authority of the LEA, this building is not covered.

Question 18: Are churches or sanctuaries that are under the LEA's authority, which are attended by students for religious purposes during normal school hours, required to be inspected?

Answer: No. However, if a church is under the authority of an LEA and is used for other school instruction (e.g., math, spelling, etc.) as part of the school's curriculum, then it must be inspected and included in the management plan.

Question 19: Are the school district's administrative offices (such as the Board of Education or the Superintendent's Office) covered by AHERA, even if students never attend classes in these buildings?

Answer: Yes. Among the structures covered in the definition of "school building" in AHERA (section 202) and the rule (section 763.83) would be "... any other facility used for the instruction or housing of students or for the administration of educational or research programs (emphasis added)."

Question 20: Are the school system's maintenance or storage facilities (e.g., bus garage or warehouse) covered by the rule?

Answer: In general, the answer is yes. Section 202 of AHERA and section 763.83 of the rule define "school building" to include "... any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of school building under paragraphs (1),(2), or (3)." Paragraphs (1), (2), and (3) cover classrooms, libraries, gymnasiums, and administrative offices. For purposes of the rule, the facility is deemed essential if the LEA uses the facility. Vacant facilities of this type (i.e., empty storage facilities, empty warehouses, etc.) are not deemed essential, and therefore are exempt, because they

are not used. Once the LEA begins to use these facilities, however, they become essential and must be addressed as required by the rule.

Question 21: An LEA has a school building which is no longer being used and is scheduled for demolition. Is the LEA required to have an accredited contractor and workers do the abatement work which is required under NESHAPS?

Answer: Not under AHERA, although individual States or localities may have other statutes. A building that is abandoned and scheduled for demolition is not covered by AHERA since the building is no longer being used as a school.

Question 22: Several LEAs bus students to bowling alleys or YMCA swimming pools and gymnasiums for physical education classes. Must LEAs inspect these buildings?

Answer: No. These buildings are not covered by the rule.

Question 23: A school uses a single room in a nonschool building on a regular basis as a classroom for elementary and secondary education purposes during regular school hours. Is the room covered by the rule? Is the entire building also covered?

Answer: The single room used by the school on a regular basis as a classroom is covered by the rule. The rest of the building is not covered.

III. GENERAL LEA RESPONSIBILITIES

Question 24: Sections 763.84(g)(2) and 763.93(e)(3)(4) refer to the "... trained person designated by the LEA to implement the management plan ...." The Rule does not indicate what specific training course is required to qualify the person(s) responsible for implementing the management plan. Should this person be "accredited" and would it be as a management planner or contractor/supervisor or project designer? What would constitute adequate training?

Answer: The LEA's designated person is not required to be accredited; however, he or she must have some minimal training. Section 763.84(g)(2) lists the training requirements. No specific hours of training were required since a designated person in a small LEA with only nonfriable ACBM may not need to have as much training as the designated person for a large city school system. Section 763.93(e)(4) requires, however, that the LEA list the course name, dates, and hours of training undertaken by the designated person.

Question 25: Can an LEA designate a committee instead of one person to coordinate asbestos programs for an LEA?

Answer: No. Section 763.84(g)(1) requires each LEA to designate "a person". This person or the LEA,

however, may choose to appoint an advisory committee.

Question 26: Can a group of LEAs share a Designated Person?

Answer: Yes.

Question 27: Must an LEA's Designated Person be an employee of the LEA, or can this person be an outside consultant, available on a part-time basis? Does the Designated Person have to be "on-site" at the LEA, or can he/she be located at another location?

Answer: The Designated Person does not have to be an LEA employee. Section 763.80(a) allows LEAs to delegate the duties of their Designated Person under the rule, but the LEAs remain responsible for the proper performance of those duties. The Designated Person does not have to be on-site at the LEA.

Question 28: Many LEAs intend to select certain person(s) who are permanent employees of the district to become accredited inspectors, management planners, project designers, contractor/supervisors and abatement workers. Does EPA foresee any problems with this approach, since § 763.84(h) cautions against "conflict of interest" among accredited personnel?

Answer: The conflict of interest provision in the rule pertains to outside contractors who serve in two or more capacities. (see rule preamble discussion, p.

41836). LEAs have the option to use their own employees to carry out all tasks.

Question 29: What is the definition of school as contained in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)?

Answer: The following excerpts include key terms from the 1965 Act. LEAs should contact their appropriate State agency for specifics on State law.

> 20 U.S.C. 3381, Elementary and Secondary Education Act of 1965
>
> (c) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.
>
> (f) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term also includes any other public

institution or agency having administrative control and direction of a public elementary or secondary school.

(h) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

20 U.S.C. 2854

(7) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

IV. INSPECTIONS, REINSPECTIONS, AND PERIODIC SURVEILLANCE

Question 30: What specifically must be inspected, and what need not be inspected? Where do you draw the line? Determining the location of every material that may contain asbestos may be impossible. Should an inspector tear up the school building (e.g., knock down walls) to find asbestos?

Answer: EPA will require LEAs to ensure that accredited inspectors conduct a thorough and complete inspection. However, in most cases, EPA does not intend that the accredited inspector undertake destructive steps (e.g., tearing down a wall) in an attempt to locate ACBM.

An accredited inspector is expected to take reasonable steps to locate ACBM. Specifically, an accredited inspector is expected to conduct a thorough visual inspection, examine all concealed accessible areas (e.g., above drop ceilings, inside ventilation shafts, etc.) and carefully review building plans and use his or her own knowledge to determine if ACBM was used in areas that are inaccessible. Building plans may provide some helpful information about where to look for ACBM, but they are not a substitute for a thorough inspection.

An accredited inspector must answer two questions with respect to inaccessible areas:

1) Is there reason to suspect that ACBM is present?

2) Is there reason to believe fibers could be released from ACBM and carried from the area?

If the answer to both questions is "yes", the inaccessible area must be examined. If the answer to question number one is "no", no further action is needed. If the answer to question number one is "yes", but question number two is answered "no", the LEA should inventory the material as assumed ACBM and keep track of the material during periodic surveillance and reinspection.

The second question above is important. A key aspect of most inspector training courses is understanding how the air circulates inside a building. If air circulates through an area that contains asbestos, asbestos fibers could be carried to the rest of the building.

Question 31: Does nonfriable surfacing and miscellaneous ACM have to be assessed? What about thermal system insulation?

Answer: Nonfriable miscellaneous and nonfriable surfacing ACBM do not have to be assessed. However, thermal system insulation with no damage must be assessed if it has potential for damage or potential for significant damage. The definitions of potential damage and potential significant damage in § 763.83 include circumstances under which there is a

"... reasonable likelihood that the material or its covering (emphasis added)" will become damaged or significantly damaged. The term "covering" applies to thermal system insulation. Thus, thermal system insulation can be characterized as having potential for damage or potential for significant damage.

In addition, § 763.90(a) states that the LEA "... shall select and implement in a timely manner the appropriate response actions in this section consistent with the assessment conducted in § 763.88 (emphasis added)." Therefore, the areas requiring response actions under § 763.90 must be assessed under § 763.88. Section 763.90(e) states that "... if any friable surfacing ACM, thermal system insulation ACM, or friable miscellaneous ACM that has potential for damage is present in a building, the local education agency shall at least implement an operations and maintenance program (emphasis added)." Similarly, thermal system insulation ACM with the potential for significant damage also has response action requirements. Since both § 763.90(e) and (f) list response actions for thermal system insulation with the potential for damage and significant damage, such material must be assessed under § 763.88.

Question 32: Can unaccredited persons under the supervision of an accredited inspector collect samples, and look in crawl spaces and other areas to locate ACBM?

Answer: No. Sections 763.85, 763.86, and 763.88 all specifically require an accredited inspector to conduct the necessary tasks in order to fulfill the inspection and reinspection requirements.

Question 33: Must encapsulated ACBM be reassessed every 3 years?

Answer: During a reinspection, in addition to checking friability, encapsulated ACBM must be closely examined to determine whether the response action has failed. If the response action has failed, the area must be reassessed.

Question 34: A school building includes a "covered exterior hallway or walkway". Does this include both the underside and roof of these areas?

Answer: Only the underside of the hallway or walkway is included.

Question 35: By what date must the reinspection be finished? Is it October 12, 1991, July 9, 1992, or 3 years from the original inspection?

Answer: Section 763.85(b)(1) states that "At least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection ..." of each school building. If a management plan became effective on July 9, 1989, a

reinspection must occur no later than July 9, 1992.

Question 36: Can a building inspector use his/her own lab to analyze the bulk samples taken?

Answer: Yes, if the lab has interim EPA or NBS accreditation.

Question 37: Can an LEA just assume that some or all friable and nonfriable suspect material contains ACM rather than taking samples?

Answer: Yes. Sections 763.86(a),(b),(c), and (d) explicitly permit suspect ACBM to be assumed to be ACM.

Question 38: What is "suspect" ACM? Can EPA provide a complete list?

Answer: EPA-approved training courses address what type of materials might contain asbestos. In addition, these courses provide guidance on where these materials are typically located in buildings.

A complete list of all suspected ACBM would be difficult to compile. However, the following is a partial list of materials that are classified as either suspected ACBM for purposes of the rule, or as materials not covered by the rule. Within the latter category, some materials may contain asbestos, but they are not building materials under the rule and therefore are not included in the

AHERA rule. Other materials would not contain any asbestos, or enough asbestos to be defined as ACM under the rule.

Material	Suspected ACBM	Not Covered by AHERA Rule
Concrete		x
Cinder block		x
Surfacing materials (e.g., spray-applied or troweled-on materials on walls and ceilings)	x	
Blackboards		x
Wall board (material could be gypsum, transite, or other product)	x	
Pressed wood		x
Thermal system insulation	x	
Corrugated-like paper product used for thermal system insulation	x	
Wall or ceiling carpet		x
Gaskets in heating and air conditioning equipment	x	
Floor tile (includes adhesives)	x	
Ceiling tile and panels	x	
Exterior roofing shingles		x, could contain asbestos
Auditorium curtains		x, could contain asbestos
Cement asbestos water pipe	x	
Chemical lab table and desk tops		x, could contain asbestos
Fire doors	x	
Fire brick for boilers	x	

Material	Suspected ACBM	Not Covered by AHERA Rule
Suspected ACBM stored in school		x, could contain asbestos
ACBM cloth adjoining airducts	x	
Chemical lab gloves		x, could contain asbestos
Fire blanket		x, could contain asbestos
Glass		x
Steel		x
Sheeting in fume hood	x	
Brake shoes		x, could contain asbestos
Kiln bricks and cement		x
Bunsen burner pad		x, could contain asbestos

Question 39: Please define what is meant by the phrase, "any change in condition", as it refers to surveillance?

Answer: A maintenance person conducting periodic surveillance would notice water damage, major delamination, a major fiber release, or even minor damage. For surfacing material, damage might also include separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; and scrapes, gouges, mars, or other signs of physical injury. Asbestos debris may also indicate damage. For thermal system insulation, damage may include gouges, punctures, water damage, crushed areas and torn or missing coverings. The person conducting periodic surveillance will have to be aware of the material's previous condition, documented in the management plan, in order to determine if any changes in the material's condition has occurred.

Question 40: Should the management planner exercise a quality control function over the inspector's report?

Answer: Section 763.88(d) requires the accredited management planner "to review the results" of inspections, assessments, and reinspections.

V. EXCLUSIONS

Question 41: Can an inspector who received accreditation in 1988 grant an inspection exclusion for all or part of a school he inspected in 1985?

Answer: Yes. The accredited inspector would essentially state that all or part of his previous inspection has met the requirements of the new rule (see § 763.99). In general, the accredited inspector is the person who can determine that the LEA is eligible for an exclusion (see sections 763.99(a)(1), (2), (3), (5), (6), and (7)). However, under § 763.99(a)(7), an architect or engineer can sign a statement that no ACBM was specified for use in the construction of a school built after October 12, 1988.

Under § 763.99(a)(4), the lead agency in a State that has received a waiver from § 763.85(a) can grant an exclusion.

VI. RESPONSE ACTIONS

Question 42: Is the removal of nonfriable asbestos-containing floor tile considered a response action that requires the use of accredited personnel? If more than 3,000 square feet is removed this summer, must TEM be used for clearance?

Answer: If the floor tile or its adhesive material does not become friable during the removal process, it is not a response action, since the definition of response action refers to a method "that protects human health and the environment from friable ACBM." If the material becomes friable during removal, however, the job is then a response action requiring both accredited personnel, and the use of TEM if the area exceeds 3,000 square feet.

Typically, vinyl asbestos floor tile is tightly bound and asbestos is generally not released under normal use. However, during a removal operation, the tile could be rendered friable. In addition, any sanding operations conducted to remove the adhesive beneath the tiles would render the adhesive material friable.

Question 43: Is the installation of carpet over damaged A/V floor tile an enclosure?

Answer: No. An enclosure is defined in § 763.83 as "an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into

the air." Carpeting is not impermeable, permanent, or airtight.

Question 44: What does the term "timely fashion" mean? How will EPA enforce this?

Answer: On page 41839 of the preamble EPA addresses the "timely fashion" issue:

> However, LEAs should be advised that in providing a schedule for beginning and completing each response action as required in § 763.93(e)(6), the LEA is specifying what constitutes implementation of preventive measures and response actions in a timely fashion for that LEA (emphasis added). EPA and State enforcement officials will be monitoring LEA adherence to these schedules to determine whether enforcement actions are warranted against those schools which fail to meet their own deadlines for completing preventive measures and response actions. In reviewing management plans, States may reject plans if the schedule for response actions is not reasonable and timely (AHERA § 205(c)(1)).

Question 45: If, during a periodic surveillance check, a custodian finds damaged thermal system insulation, what must be done?

Answer: Section 763.90(b) states that "... if damaged or significantly damaged thermal system insulation ACM

is present in a building, the local education agency shall:

1) At least repair the damaged area.
2) Remove the damaged material if it is not feasible, due to technological factors, to repair the damage.
3) Maintain all thermal system insulation ACM and its covering in an intact state and undamaged condition."

As a result, the LEA must at least repair the damaged area and make sure that the thermal system insulation is constantly maintained in an intact state and undamaged condition.

Question 46: Is ceiling tile friable or nonfriable? If it is friable, must accredited persons and TEM be used to remove 3,600 square feet of ceiling tile in a cafeteria?

Answer: Like all other materials, the friability of ceiling tile must be determined by hand pressure. If the ceiling tile is friable, and the inspector either assumes ceiling tile is ACM or sampling confirms the presence of ACM, accredited persons and TEM must be used in the example outlined above.

VII. OPERATIONS & MAINTENANCE (O&M)

Question 47: Please define the phrase, "... materials that are about to become friable ..."

Answer: If a workman is about to sand nonfriable floor tile that was assumed to be ACBM, this material would shortly become friable. The material would immediately be subject to the O&M requirements found in § 763.91.

Question 48: Are there circumstances under which initial cleaning requires the use of an accredited supervisor?

Answer: No. Section 763.91(c)(1) does not require accredited personnel for this task.

Question 49: Must an accredited person develop the O&M plan?

Answer: No. AHERA stipulates that only certain activities require an accredited person. Section 206(a)(3) does not require an accredited person to develop the O&M plan. However, EPA strongly recommends that schools use an accredited management planner to develop the O&M plan to ensure that the plan is consistent with the regulations.

Question 50: O&M covers friable material only. What about nonfriable ACBM with the potential for damage? Does this type of material need to be addressed in an O&M plan?

Answer: Nonfriable surfacing and miscellaneous materials need not be covered by an O&M plan, even if they have potential for damage or significant damage.

However, as stated in § 763.90(e) and (f), thermal system insulation with the potential for damage or significant damage must be covered in an O&M program as described in § 763.91.

Question 51: What is the difference between § 763.91, which addresses operations and maintenance activities, and the O&M plan required in § 763.93?

Answer: The operations and maintenance requirements listed in § 763.91 are in effect for all LEAs whenever specific maintenance activities are conducted or accidents occur. The O&M plan as part of the management plan is a particular control program tailored to each individual school. Section 763.91 describes the procedures which LEAs must carry out for certain O&M activities, such as cleaning, in their buildings after December 14, 1987. An O&M plan in § 763.93 is a specific control program for a particular school building. For example, the O&M plan for a certain school may include a monthly schedule for routine cleaning, and may also include specific requirements of how to prevent fiber release from ACBM within the school building. (The procedures for such a plan are provided in § 763.91.) The O&M plan for a particular school

may also include a permit system to exercise control over work conducted in the school that could disturb ACBM. The O&M plan must be implemented as part of the school's management plan no later than July 9, 1989.

VIII. CUSTODIAL AND MAINTENANCE WORKER TRAINING

Question 52: a) Will any of the custodial and maintenance worker personnel who have received previous training be "grandfathered" in? b) If so, what criteria will these workers have to meet, and what will be the process for making the determination?

Answer: a) Custodial and maintenance personnel may be "grandfathered". Section 763.92(a)(3) states that "... local education agency maintenance and custodial staff who have attended EPA-approved asbestos training or who received equivalent training for O&M and periodic surveillance activities involving asbestos shall be considered trained for purposes of this section."

b) In making this determination, LEAs will need to determine if previous training adequately covered the topics required in §§ 763.92(a)(1) and (2). Equivalent training in this case means comparable training; it need not be exactly the same. Obviously a training course taken in 1985 could not have covered the AHERA statute or regulation, or the OSHA standard. Previous instruction, however, must have covered the following key items: information on health effects; how to recognize ACBM and damaged ACBM; and, for staff who may disturb ACBM, information on handling ACBM, use of respirators and hands-on training. Additionally,

EPA recommends that individuals who have received equivalent training in the past receive information on AHERA.

Question 53: What are the qualifications or exact training needed by an individual who conducts the 2-hour awareness training and the 14-hour additional training for the maintenance and/or custodial employees?

Answer: The regulation does not require specific qualifications for instructors who perform O&M training. LEAs should, however, select instructors with a professional or educational background in the asbestos field.

Question 54: Does EPA plan to develop a "canned" training program for the 2-hour training course required for custodial and maintenance workers under § 763.92?

Answer: With EPA funding, the National Asbestos Council and the American Association of School Administrators (AASA) have worked jointly to develop a videotape and instructor's manual that generally cover the requirements for the 2-hour awareness training for custodial and maintenance staff. One of EPA's funded training centers, Temple University, is also developing an awareness video. As required by the rule, custodial and maintenance staff must also receive site-specific training (e.g., location of

ACBM in their building). LEAs interested in the AASA videotape should contact AASA at (703)875-0723 for details.

Question 55: Sections 763.92(a)(1) and (2) refer to 2-hour training and 14-hour training. If an LEA's workers have not taken the 3-day course to become "accredited" abatement workers, and the LEA decides to have workers receive the 2-hour and 14-hour training, where should the workers go for the abbreviated training? How is this training documented?

Answer: EPA anticipates that LEAs will use a variety of resources to train custodial staff. Private consultants, LEA staff, local colleges and labor groups are potential sources of instructors for O&M training. Section 763.94(c) requires LEAs to keep specific information on O&M training, including the location of the training and the number of hours of training.

IX. MANAGEMENT PLANS

Question 56: Under what circumstances can a State disapprove a management plan? Is an LEA required to accept changes recommended by the State?

Answer: Section 205(c)(1) of AHERA states

> ... the Governor may disapprove a management plan within 90 days after the date of receipt of the plan if the plan:
> (A) does not conform with the regulations under § 203(i) (or with § 204(d) if there are no regulations),
> (B) does not assure that contractors who are accredited pursuant to this title will be used to carry out the plan, or
> (C) does not contain a response action schedule which is reasonable and timely, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the local education agency authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the local education agency to continue to provide educational services to the community.

According to § 205(c)(2) of AHERA, "if the State Governor disapproves a plan, the State Governor shall explain in writing to the LEA the reasons why

the plan was disapproved and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of disapproval of its plan, the LEA shall revise the plan to conform with the State Governor's suggested changes (emphasis added). The Governor may extend the 30-day period for not more than 90 days."

The LEA, therefore, must revise its plan to conform with changes specified by the State in conformance with § 205(c)(1). If the LEA's plan does not conform with the State's modified plan, the school is in violation of AHERA.

Question 57: An LEA has to develop an asbestos management plan for each school. Does this mean an LEA has to have a separate management plan for each of its schools, or can it have one large plan that covers all of its schools?

Answer: LEAs must have a separate management plan for each school, according to § 763.93(a)(1). In addition, § 763.93(g)(3) states, "Each school (emphasis added) shall maintain in its administrative office a complete, updated copy of the management plan for that school." To clarify further, this does not mean that each building on a school's campus needs

the management plan, just the administrative office for that school.

Question 58: After October 12, 1988, under what circumstances will LEAs have to submit a revised management plan to the State for review?

Answer: Sections 763.93(a)(2) and (3) require LEAs to submit management plans to their States for school buildings leased, otherwise acquired, or used as school buildings after October 12, 1988. This requirement is for buildings added to the plan.

Question 59: Must LEAs notify their State when they update their management plans after a reinspection?

Answer: No. The rule does not require LEAs to notify their State when they update the management plan as a result of a reinspection. This pertains to buildings already in the management plan. However, through their own regulations, States may require LEAs to notify the appropriate State agency when plans are updated as a result of a reinspection.

Question 60: When must the LEA initially notify parent, teacher, and employee groups in writing about the availability of the management plan?

Answer: Section 763.93(g)(4) requires LEAs to notify in writing parent, teacher, and employee organizations of the availability of the management plan when the

management plan is submitted to the Governor (State designee) and at least once each school year.

Question 61: If the LEAs have been inspected by an accredited inspector, samples have been taken and analyzed, and no asbestos-containing material has been found, must the district still develop a management plan? At what point is it not necessary to develop a plan?

Answer: The answer to the first part of this question is yes. Section 763.93(e) requires the results of the inspection to be reported in the management plan. With respect to the second part of the question, all LEAs, even a school built after October 12, 1988, with an exclusion based on an architect's statement that no ACBM was used in construction (see § 763.99(a)(7)), must have a management plan. In this case, the management plan would simply include the architect's statement and the notification to parents, teachers, and employees regarding the availability of the plan.

Question 62: If, in 5 years, an LEA has all ACM removed from a school building, does the annual written notification requirement regarding the management plan availability and asbestos-related activities still apply?

Answer: The annual written notification to parents, teachers, and other school employees remains in effect even if a school indicates it has removed all ACM. The purpose of the availability of the management plan is to enable the public to determine if the LEA has implemented the management plan satisfactorily.

Question 63: Are the LEAs required to keep and/or maintain their management plan for any specified length of time?

Answer: The rule does not specify a date after which LEAs no longer need a management plan. As a result, LEAs should plan to keep their management plans indefinitely. Certain records, however, can be discarded within a certain period of time after the ACBM has been removed (see § 763.94).

Question 64: Section 763.93(f) states that the LEA "may" require a statement signed by an accredited management planner that the plan is in compliance with the Rule, but that this statement may not be signed by the person responsible for implementing the plan (even though he/she may be an accredited management planner). Why is the plan implementor prohibited from signing this statement?

Answer: Section 763.93(f) comes directly from the statute (§ 203(i)). However, as noted in the actual language, such a statement is <u>not</u> required. The

purpose of this prohibition is to discourage conflict of interest between the management plan preparer and an abatement contractor. For LEAs with a concern about conflict of interest between the management planner and the abatement contractor, or about the adequacy of the plan, such a statement should be considered.

Question 65: What forms of written public notifications are acceptable? If no specific organizations exist for the LEA to address, what constitutes acceptable written notification?

Answer: LEAs have a great deal of flexibility with respect to methods of notifying parents, teachers, and employees. However, § 763.93(g)(4) requires LEAs to keep a copy of the notification. A letter to the PTA and the employees' union is acceptable.

In the absence of such formal organizations, the LEA must still notify parents, teachers, and employees in writing. As stated on page 41841 of the rule's preamble, in some instances this notification could take the form of a newspaper advertisement, an article in an LEA newsletter, or some other form. The Agency will further examine these methods of notification on a case-by-case basis. LEAs unsure about how to properly notify these groups should contact their Regional Asbestos Coordinator.

Please note, under § 763.93(g)(4), LEAs must include in the management plan a description of the steps taken to notify such organizations, and maintain a dated copy of the notification.

X. RECORDKEEPING

Question 66: How should the periodic surveillance results be documented? How detailed does the information have to be and what constitutes adequate records?

Answer: Section 763.94(d) requires LEAs to "... record the name of each person performing periodic surveillance, the date of the surveillance, and any changes in the conditions of the materials."

A one-page checklist (i.e., change/no change) with sufficient room for comments by the person conducting the surveillance would be adequate. If changes are noticed, the comments must describe each change clearly.

XI. ACCREDITATION

Question 67: Does a person have to take the training course and exam from the same sponsor for accreditation?

Answer: AHERA sections 206(b)(1) and (c)(1) indicate that persons seeking accreditation need to take a training course and pass an examination. For full accreditation through an EPA-approved course, persons must take the course and exam from the same training course sponsor. States that have accreditation programs may require persons seeking accreditation to pass a State-administered exam. Section 206(c)(1) of AHERA states that "... the Administrator shall ensure that any EPA-approved training course is consistent with the model plan (including testing requirements) developed under subsection (b). A contractor may be accredited by taking and passing such a course."

Question 68: If an individual took a course at an EPA training center after January 1, 1985, and was "grandfathered in" as having taken an approved course, when does this person have to take a course to become fully accredited? When is the first refresher course required?

Answer: Persons who are "grandfathered in" after January 1, 1985, do not have to take a course to become fully accredited until one year after their State has or was required to have an accreditation plan approved

by EPA, and do not have to take the first refresher course until 2 years after their State has or was required to have an accreditation plan approved by EPA. For example, a State legislature convenes in January 1988. By July 1988, the State must have developed an accreditation program that meets the Model Plan. Contractors, inspectors, management planners, workers, supervisors and abatement project designers in that State have one year to become fully accredited (i.e., July 1989). The first refresher training would be required by July 1990. These dates are still in effect for individuals even if the State fails to act, in which event, they would complete EPA-approved courses at the specified intervals.

Question 69: What is the time frame for accredited individuals to take the required refresher training course? For example, are they required to take the refresher course prior to the expiration of their accreditation, or 60 days after? If they do not take the refresher course prior to expiration or some subsequent date including a grace period, will they be required to take another full training course and pass the required examination before they can be reaccredited?

Answer: Individuals must take an annual refresher course to maintain their accreditation, as specified in the

answer to Question 68. In the example cited above, if a person fails to take the refresher course within the 1-year prescribed period, their accreditation ceases. As a result, those persons cannot conduct AHERA work in their pertinent discipline. They will have 12 more months to take the refresher course in order to resume conducting AHERA work. If a refresher course is not taken during that period (i.e., within 24 months after accreditation), the entire training course (e.g., 4 days for supervisors) must be repeated and the exam passed.

Question 70: When would a conflict of interest exist among accredited personnel?

Answer: A conflict of interest with respect to accredited personnel would exist if, for example, the management planner and abatement contractor worked for the same firm. The planner might recommend to the LEA more expensive response actions than are necessary in the management plan.

Question 71: May a person serve as an accredited inspector and management planner on the same school project?

Answer: Yes. EPA anticipates that many LEAs will have the same person conduct both tasks. However, LEAs must still evaluate whether that person has a conflict of interest (see section 763.84(h)).

Question 72: Can an LEA hire one abatement firm both to conduct a response action and to carry out the TEM clearance air monitoring on that project?

Answer: No. In Appendix A on page 41858 of the rule under "Sampling", it states that TEM "... sampling operations must be performed by qualified individuals completely independent of the abatement contractor to avoid possible conflict of interest." The LEA would have to select another person or firm "completely independent" of the abatement contractor to do this work. The abatement firm would not be allowed to subcontract this work since the subcontractor is not "completely independent" of the contractor.

Question 73: Can an LEA itself become approved as a training center?

Answer: Yes.

Question 74: How can an LEA find accredited personnel to perform inspections, develop management plans, and conduct response actions?

Answer: In States with EPA-approved programs, the LEA should contact the appropriate State agency responsible for accreditation. In States without approved programs, LEAs may communicate with the contacts from EPA-approved courses and request a list of accredited individuals. LEAs also have the

option of hiring accredited personnel from a State with an EPA-approved program. Of course, LEAs may also choose to solicit proposals to conduct inspections, management plans and response actions in newspapers, professional or trade journals. The requirement that persons must be accredited should be emphasized in the LEA's description of the project. Two national organizations, the National Asbestos Council and the National Insulation Contractors Association, have or are in the process of developing lists of their members who have accreditation credentials. Finally, LEAs may have their own personnel trained and accredited through EPA-approved courses or State programs.

Question 75: Must an individual respirator fit test be given to each and every training course participant? Many training providers are concerned about their liability. Shouldn't the student be required to furnish a doctor's statement that indicates the student can safely wear a respirator?

Answer: Training entities must provide students with the opportunity for respirator fit testing. If a student declines to be fit-tested, that is his or her prerogative. In addition, a training entity may require the student to furnish medical evidence that he or she is capable of wearing a respirator. Therefore, if a student has a medical

statement from a physician indicating that he or she can be fit-tested, and the student wants to be fit-tested, the training entity must fit-test the student.

Question 76: Must an accredited designer be used to design a response action?

Answer: Section 763.90(g) requires that "Response actions including removal, encapsulation, enclosure or repair, other than small-scale, short-duration repairs, shall be designed and conducted by persons accredited to design and conduct response actions (emphasis added)." An accredited designer, then, must develop the job specifications for a response action.

Question 77: If an abatement designer takes the course for contractors and supervisors, and his/her certificate says "contractor/supervisor", how can the individual prove that he/she is qualified to design abatement projects?

Answer: The designer should show the LEA the relevant section of the Model Accreditation Plan that enables a person who has successfully completed the contractor/supervisor course to be accredited as a designer (see plan page 15878, "Abatement Project Designers").

Question 78: Where does it say in the AHERA rule that LEAs must use accredited workers and supervisors to conduct asbestos abatement work after December 14, 1987?

Answer: Section 763.90(g) requires response actions to be designed and conducted by persons accredited to design and conduct response actions. On page 41826, under the heading "Dates", it states that the "... rule shall be effective on December 14, 1987." As a result, the requirement to use accredited personnel under AHERA is in effect as of December 14, 1987. Any asbestos-related work requiring accreditation conducted after that date must use accredited persons.

XII. TEM, PCM, SAMPLING AND ANALYSIS

Question 79: With respect to TEM, what does the term "contiguous portions" mean?

Answer: The intent of § 763.90(i)(8) is to prevent an LEA from artificially dividing up a large project so as to avoid the TEM requirement. For example, an LEA that has a 3,300 square foot gymnasium cannot artificially divide the gym into 3 separate areas of 1,100 square feet, and then conduct separate abatement in each area, clearing each area by PCM. These areas are obviously contiguous, thus TEM is required.

However, an abatement job in wing A of a building that totals 1,700 square feet and a job in a separate, non-contiguous wing that totals 1,500 square feet are not contiguous portions of material.

Question 80: If an LEA plans to remove 3,500 square feet of ACBM from six adjacent classrooms joined by a hallway, does TEM have to be used for clearance of the entire area or can the LEA choose to remove the ACBM from each classroom separately and use PCM to clear each separate room?

Answer: TEM must be used unless clear engineering reasons exist for dividing such a project into smaller areas. A primary reason EPA permitted the use of PCM for the 3-year phase-in period was to enable an

LEA to minimize its total abatement expenses for a small project (e.g., less than 3,000 square feet). For one small project, EPA believes the additional cost of TEM analysis at current prices could greatly increase the total cost of the project. However, permitting an LEA to subdivide what would normally be one large project into several smaller projects defeats the purpose of the TEM requirement. As necessary, EPA will review such situations on a case-by-case basis.

Question 81: What is meant by the phase "at approximately the same time" (in § 763.90(i)(8)) as it relates to TEM clearance?

Answer: The intent of § 763.90(i)(8) is to prevent an LEA from avoiding the TEM requirement by either artificially dividing up a larger project, or by removing ACBM in stages over the course of a relatively short period of time from what normally would have been one large project if the TEM phase-in did not exist. For example, if an LEA removed 1,600 square feet of surfacing ACBM in June 1988, and 1,600 square feet of adjacent surfacing ACBM a few weeks later, EPA would consider this to be removing contiguous portions of ACBM at "approximately the same time". As necessary, EPA will review such situations on a case-by-case basis.

Question 82: Would surfacing ACBM on ceilings of two classrooms on two separate floors be viewed as contiguous areas?

Answer: No. Even if one classroom was directly beneath the other classroom, these would not be contiguous areas under the rule. Each floor would normally have its own containment barrier.

Question 83: With regard to TEM, is there a plan to establish a certain number of air samples to be collected for abatement project clearance based on square footage/area or cubic footage/volume?

Answer: No. As stated in Appendix A, the minimum number of TEM samples that need to be collected for each test site is 13 samples. These break down as follows:

- 5 samples per abatement area
- 5 samples per ambient area positioned at locations representative of the air entering the abatement site
- two field blanks
- one sealed blank

Not all of these samples will have to be analyzed, in certain cases.

Question 84: Are there criteria for doing aggressive air monitoring?

Answer: Yes. Unit III.B.7.d. of Appendix A in the rule provides criteria for aggressive air monitoring.

Question 85: Please define the term "nonfriable suspected ACBM." Also, what does the term "manner sufficient to determine" mean with respect to sampling such material?

Answer: Nonfriable suspected ACBM could be wallboard or floor tile. "Manner sufficient to determine" means the accredited inspector must take an appropriate number of samples for that material. For example, a number of training courses recommend that an inspector take the same number of samples for materials like floor and ceiling tiles as the inspector would for surfacing material. Other training courses suggest that three samples should be taken from homogeneous areas of such material.

Question 86: Please clarify the use of the term, "homogeneous area", which has a regulatory definition of being uniform in color or texture, when applied to thermal system insulation having pipe lagging that has either been discolored or applied differently to give the appearance of possessing a different texture.

Answer: The accredited inspector must make a judgment on whether pipe lagging is indeed uniform in color and texture. If the suspect material looks darker due to water damage, it is appropriate for the inspector to consider this as part of the same homogeneous area. If the suspect material has been

applied differently, however, it probably would not be uniform in color and texture since there would be a noticeable difference in the suspect material's appearance.

Question 87: If PCM is being used for clearance, does the sampling volume table in the mandatory TEM method have to be followed to determine the sampling volume for the PCM samples?

Answer: No. The table is required only for samples which will be analyzed by TEM. The table was set up to maintain an analytical sensitivity of 0.005 fibers per cubic centimeter (f/cm^3) for the TEM analysis. The table does not apply to the PCM analysis.

Question 88: How does one determine the amount of air to sample for the PCM analysis to maintain a limit of quantification of 0.01 f/cm^3?

Answer: Follow the procedure in the EPA Silver Book, specifically outlined on pages 4-5. The volume required to reliably quantify fibers down to 0.01 f/cm^3 may be calculated using the first formula on these pages. Note that for NIOSH 7400, the minimum fiber loading is specified. Also, alert labs that the area of viewing for a field will vary between microscopes and that they must determine this value from their microscopes.

Question 89: Can dual-headed pumps be used at abatement sites when taking the five samples?

Answer: This avoids the intent of the directions given in the nonmandatory appendix for TEM. The method states: "Position ambient samples at locations representative of the air entering the abatement site." A dual-headed pump will not sample air at two different locations.

Question 90: Can someone collect more than five samples inside the abatement site and pick the best of the results for the clearance test?

Answer: No. An equal number of samples should be taken inside and outside the abatement site for clearance. The minimum number is five inside and five outside. The rule does not prohibit the collection of more than five samples inside and an equal number outside; however, collection of a higher number inside and then selecting only five of those values is not appropriate.

Question 91: How can the public get copies of the listing of accredited laboratories?

Answer: Contact a Regional Asbestos Coordinator or call the TSCA Hotline at (202) 554-1404.

XIII. WARNING LABELS

Question 92: Do you have to label enclosed or encapsulated ACBM in routine maintenance areas?

Answer: Yes. Section 763.95(a) states that "... the local education agency shall attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas (such as boiler rooms) at each school building. This shall include:

1) Friable ACBM that was responded to by a means other than removal.
2) ACBM for which no response action was carried out."

Question 93: What are some examples of routine maintenance areas that would require labeling? What does routine mean?

Answer: Examples are boiler rooms, equipment rooms, pipe tunnels, fan rooms, air handling rooms, or any other area that serves primarily as a maintenance area.

"Routine" means that a maintenance or custodial person frequents an area (see above) on a regularly scheduled or predictable basis to perform maintenance activities.

Question 94: In general, will school employees other than custodial and maintenance workers have to stay out of routine maintenance areas?

Answer: The rule does not prohibit other school employees from entering routine maintenance areas.

XIV. TRANSPORT AND DISPOSAL

Question 95: In Appendix D of the rule, dealing with the transport and disposal of asbestos waste, should the "shoulds" be interpreted as "shalls"? In other words, are these recommendations now requirements?

Answer: The recommendations in the transport and disposal guidance document have not become requirements. LEAs have to comply with applicable DOT and NESHAP regulations governing transport and disposal, not with the recommendations found in Appendix D. Enforcement of Appendix D will be based on the current DOT and NESHAP regulations cited in the Appendix, not on the recommendations suggested therein.

XV. STATE WAIVERS

Question 96: Can EPA delegate the AHERA regulatory program to government agencies such as county and city governments? Several county and city governments have programs which are more stringent.

Answer: With respect to § 763.98 which addresses State waivers, these waivers apply only to States.

XVI. MISCELLANEOUS

Question 97: Who will review the management plans submitted by the Department of Defense (DOD)?

Answer: Section 203(1) of AHERA requires the Secretary of Defense to carry out "... any function, duty, or other responsibility imposed on a Governor of a State [for any school] operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)."

Question 98: Does the regulation explicitly prohibit any conflict of interest?

Answer: Yes. In Appendix A to the rule, the regulation states that TEM "... sampling operations must be performed by qualified individuals completely independent of the abatement contractor ..."

Question 99: What are EPA's plans for developing standardized or model forms for inspections and/or management plans?

Answer: The EPA-funded model training course materials for trainers, available for purchase by calling 301/468-1916, and the LEA Guide to assist LEAs in complying with the new rule, mailed to LEAs in February, include model forms and formats for inspections and management plans, respectively.

Question 100: In a high school vocational-tech class dealing with automobile brake repairs, or in a school maintenance facility that repairs brakes on school buses, is the asbestos hazard from brake dust covered by AHERA?

Answer: No. AHERA covers asbestos-containing building materials only, and brake shoes are not building materials under AHERA. However, EPA believes it is advisable to establish a program to contain brake dust and prevent its release (see also OSHA's Appendix F to its rule). EPA has proposed a rule to phase out the use of asbestos in brakes and other products. Information on establishing a program to control brake dust can be found in the publication,

Guidance for Preventing Asbestos Disease Among Auto Mechanics. This publication is available from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402